Filed 1/5/16 Community Hospital of San Bernardino v. Allenby CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COMMUNITY HOSPITAL OF SAN BERNARDINO et al., Plaintiffs and Appellants, v. CLIFF ALLENBY, as Director, etc., et al., Defendants and Respondents.	B261182 (Los Angeles County Super. Ct. No. BC520005)

APPEAL from an order of the Superior Court of Los Angeles County. Deirdre H. Hill, Judge. Affirmed in part and reversed in part.

Hooper, Lundy & Bookman, Lloyd A. Bookman, Joseph R. LaMagna and Stanton J. Stock for Plaintiffs and Appellants.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Richard T. Waldow and Jonathan E. Rich, Deputy Attorneys General, for Defendants and Respondents.

Plaintiffs and appellants Community Hospital of San Bernardino, formerly known as San Bernardino Community Hospital, and Dignity Health, formerly known as Catholic Healthcare West, challenge the dismissal of their lawsuit following a trial court order sustaining the demurrer of defendants and respondents Cliff Allenby, Director of the California Department of State Hospitals (DSH), the DSH, and Patton State Hospital (Patton). At issue is the application of Welfare and Institutions Code section 4101.5 (section 4101.5). According to plaintiffs, they are entitled to reimbursement amounts pursuant to the parties' contracts, even though section 4101.5, which limits reimbursement amounts, was enacted during the term of the contracts. According to defendants, they are only required and permitted to pay plaintiffs the amounts set forth in the statute.

At this stage of the proceedings, we agree with plaintiffs. Accordingly, we reverse the order sustaining defendants' demurrer.

FACTUAL[1] AND PROCEDURAL BACKGROUND

According to the first amended complaint (FAC), DSH is the state agency responsible for the management and operation of California's state mental hospitals, including Patton. In or around June 2009, DSH entered into written agreements with plaintiffs, pursuant to which plaintiffs would provide medical services in San Bernardino County to Patton patients and DSH would reimburse plaintiffs at negotiated contract rates $30 million to Community Hospital of San Bernardino and $20 million to Catholic Healthcare West. The term of these contracts was initially from July 1, 2009, through June 30, 2011.

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1 "Because this matter comes to us on demurrer, we take the facts from plaintiff's complaint, the allegations of which are deemed true for the limited purpose of determining whether the plaintiff has stated a viable cause of action. [Citation.]" (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

During the term of these contracts, section 4101.5 was enacted and took effect on October 19, 2010. Section 4101.5 provides, in relevant part, that DSH "may contract with providers of health care services and health care network providers, including, but not limited to, health plans, preferred provider organizations, and other health care network managers." (§ 4101.5, subd. (a).) Section 4101.5 limits the reimbursement rates to which DSH may agree: DSH "shall not reimburse a contract provider of hospital services at a rate that exceeds 130 percent of the amount payable under the Medicare Fee Schedule, a contract provider of physician services at a rate that exceeds 110 percent of the amount payable under the Medicare Fee Schedule, or a contract provider of ambulance services at a rate that exceeds 120 percent of the amount payable under the Medicare Fee Schedule." (§ 4101.5, subd. (c).) Section 4101.5 further provides that the aforementioned reimbursement rates "shall not apply to . . . services provided pursuant to . . . a contract executed prior to September 1, 2009."[2] (§ 4101.5, subd. (c).)

On May 3, 2011, the parties executed standard agreement amendments to the 2009 contracts. According to the amendments, the term of the agreement was from July 1, 2009, through June 30, 2012. The amount of reimbursement mirrored that set forth in the agreements—$30 million to Community Hospital of San Bernardino and $20 million to Catholic Healthcare West. The amendments provide: "The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein: [¶] A. This is an Amendment to the original Agreement to extend the dates of service through June 30, 2012 (Refer to the attached revised page of the contract, 'Exhibit B,' for new language). [¶] B. All other terms and conditions shall remain the same."

On or around April 13, 2012, DSH notified plaintiffs that it would thereafter pay them pursuant to the reimbursement rates mandated by section 4101.5.

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[2] The rates mandated by section 4101.5 are lower than the rates to which DSH agreed in June 2009.

On August 30, 2013, plaintiffs filed suit against defendants. The FAC alleges four causes of action, all of which arise out of defendants' refusal to pay plaintiffs pursuant to the contracts and amendments on the grounds that they are restricted by section 4101.5.

Defendants demurred to the FAC, arguing that section 4101.5 applies and limits DSH's authority to pay plaintiffs; plaintiffs only are entitled to monies allowed under section 4101.5, not what is set forth in the contracts and amendments. Plaintiffs opposed the demurrer.

After entertaining oral argument, the trial court sustained defendants' demurrer without leave to amend, reasoning that because the amendments to the contracts were executed after September 1, 2009, defendants were permitted to reduce the reimbursement rates in accordance with section 4101.5. Plaintiffs' action was dismissed, and this timely appeal ensued.

DISCUSSION

I. *Standard of review*

"Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: 'On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed "if any one of the several grounds of demurrer is well taken. [Citations.]" [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]' [Citations.]" (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

II. *Breach of contract*

In the first cause of action, plaintiffs allege breach of contract against defendants. The elements of a breach of contract claim are: (1) the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) the resulting damages to plaintiff. (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.)

Here, that is exactly what is alleged in the FAC. The parties executed contracts for reimbursement before September 1, 2009, and defendants are bound to reimburse plaintiffs for those contractual amounts. Section 4101.5 does not mandate a different result. Even though the amendments were executed after September 1, 2009, those amendments merely modified the original contracts. They did not constitute new agreements. (*Unite Here Local 30 v. Department of Parks & Recreation* (2011) 194 Cal.App.4th 1200, 1211.) After all, the entire purpose of the amendments was to maintain, continue, and extend the original contracts. Without the original contracts, the amendments have no meaning. (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1384–1385 [the agreements are reasonably susceptible to the meaning ascribed by plaintiffs in the pleading].)

In urging us to affirm, defendants assert that the amendments cannot be enforced because they are unlawful—under section 4101.5, DSH had no authority to agree to any rate that exceeded the statutory rate after September 1, 2009. This argument is circular. It is true that DSH had no authority to agree to any rate above the statutory rate, but only if it was entering into a new agreement; here, there were agreements in place and DSH merely agreed to modify those agreements.

Citing *Withers v. Bousfield* (1919) 42 Cal.App. 304 (*Withers*), defendants also argue that plaintiffs' "attempted retroactive application of the [amendments] is contrary to settled law that contract amendments executed after the date of an intervening statute

should be governed by the terms of the intervening statute." That is not what *Withers* held and we have not been directed to a case that has cited *Withers* for that proposition.[3]

III. *Unjust enrichment and estoppel*

In the fourth and fifth causes of action, plaintiffs allege claims of unjust enrichment and estoppel. "'The elements for a claim of unjust enrichment are "receipt of a benefit and unjust retention of the benefit at the expense of another." [Citation.] "The theory of unjust enrichment requires one who acquires a benefit which may not justly be retained, to return either the thing or its equivalent to the aggrieved party so as not to be unjustly enriched." [Citation.]' [Citation.]" (*Lyles v. Sangadeo-Patel* (2014) 225 Cal.App.4th 759, 769.) Similarly, "[f]our elements must be present to apply the doctrine of estoppel against the State: '". . . (1) . . . [it] must be apprised of the facts; (2) [it] must intend that [its] conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of the facts; and (4) . . . must rely upon the conduct to his injury . . . .'" [Citations.]" (*DeYoung v. Del Mar Thoroughbred Club* (1984) 159 Cal.App.3d 858, 862.)

Defendants do not dispute that the elements of these causes of action are adequately pled. Rather, relying upon *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228 (*Amelco*), they assert that equitable remedies cannot be used to enforce an otherwise void agreement against the government. *Amelco* is readily distinguishable; it considered a public works contract in the context of the competitive bidding statutes. (*Id.* at pp. 234, 239.) Moreover, defendants cite the following comment in *Amelco*: "'If, as we have seen, the contract is absolutely void as being in excess of the agency's power, the contractor acts at his peril, and he cannot recover payment for the work performed.'"

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[3] *Withers*, which has not been cited by either our Supreme Court or other Courts of Appeal since 1968, considered whether "a suit would lie against the guarantor of a note secured by an instrument in the nature of a trust deed without first exhausting the security." (*Loeb v. Christie* (1936) 6 Cal.2d 416, 418.)

(*Amelco*, at p. 234.) That statement presumes that a contract has been declared void; no such determination has yet been made here.

IV. *Constitutional causes of action*

The second and third causes of action are premised on violations of the United States and California Constitutions. On appeal, plaintiffs "acknowledge that, if the Amendments constitute new contracts, then there can be no unlawful interference with existing contracts and no violation of due process. However, as discussed above, the amendments are mere extensions of existing contracts. They are not new contracts. Because the Court's rationale for dismissing [plaintiffs'] Second and Third Causes of Action hinges on this issue, which was not expressly addressed, the Court's decision must be reversed."

As set forth above, we agree with plaintiffs that the trial court erred in dismissing their breach of contract and equitable causes of action. But, plaintiffs have not met their burden in their opening brief in demonstrating how the trial court erred in dismissing these two causes of action.[4] (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) For example, they do not address the tripartite test utilized in examining claims for violation of the contracts clause. (U.S. Const., art I, § 10; Cal. Const., art I, § 9; *Hellinger v. Farmers Group, Inc.* (2001) 91 Cal.App.4th 1049, 1064.) They likewise do not argue how defendants violated their right to due process. Absent a complete reasoned argument, plaintiffs are not entitled to reversal. (Cal. Rules of Court, rule 8.204(a)(1)(A); *Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 165 [arguments not fully briefed are waived].)

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[4] Arguments first raised in a reply brief are not considered on appeal. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

DISPOSITION

The order dismissing the second and third causes of action is affirmed. The order dismissing the first, fourth, and fifth causes of action is reversed. Parties to bear their own costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT